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### Small ISP stands up to Rightscorp's "piracy fishing expedition" and wins

A Rightscorp DMCA subpoena, asking for 71 subscriber identities, is thrown out.

by Joe Mullin - May 11, 2015 4:20pm EDT

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Flickr user: Phillip Pressar

Online copyright enforcer Rightscorp contacts alleged Internet pirates, sometimes on their cell phones, and demands \$20 per song from them. It's a business that has led to tens of thousands of payment demands, but Rightscorp is **far from profitable**.

But Rightscorp needs cooperation from ISPs to get contact information for its targets, and many ISPs don't cooperate. Now, one ISP, Birch Communications, has seen through the legal process, quashing a Rightscorp DMCA subpoena issued last September.

"Our first order of business when anyone requests access to a customer's private information is to refuse, absent a valid subpoena or court order, which we then scrutinize as we did with Rightscorp's illegal subpoena in this matter," **said Christopher Bunce**, Senior VP and GC for Birch, in a press statement about the matter sent out today. "Rightscorp's attempt to gain access to our customers' data was in essence a piracy fishing expedition."

The matter began in September of last year when Rightscorp sent a subpoena to Cbeyond, a Georgia technology company that had just been purchased by Birch. The subpoena detailed more than 1,200 instances of copyright infringement by 71 users with Cbeyond IP addresses.

Cbeyond/Birch moved to quash the subpoena and asked for sanctions against Rightscorp. On Wednesday, a Georgia federal judge **agreed (PDF)** with Birch that the subpoena is unacceptable.

"The Subpoena in this action arose from alleged copyright infringement that is not yet—and may never become—the subject of an action pending in any court," wrote US District Judge William Duffey.

ISPs have a legal requirement to "terminate repeat infringers" in order to maintain their safe harbor

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from copyright suits. But the DMCA doesn't obligate them to remove or disable access to infringing material when they're acting "merely as a conduit for allegedly infringing material," wrote Duffey.

The 11th Circuit, which governs Georgia, hasn't ruled on the matter, but appeals courts in the 8th Circuit and DC Circuit both sided against copyright holders in similar cases with "persuasive and well-reasoned" rulings.

Duffey didn't agree to sanction Rightscorp, however.

"The issuance of a subpoena under Section 512(h) to a conduit ISP is an issue of first impression in our Circuit," he noted. To the judge, Rightscorp's actions didn't amount to a frivolous filing.

Another ISP, Grande Communications, also stood up to a subpoena it received from Rightscorp around the same time as the Cbeyond subpoena. In that case, Rightscorp immediately withdrew its subpoena, and the case was dismissed.

Rightscorp was founded in 2011, and it makes money by sending out tens of thousands of copyright infringement e-mails and calls. Its main clients are music labels Warner Music and BMG. The company says it works with more than 230 ISPs, representing about 15 percent of US subscribers. But that hasn't been enough to make it profitable—Rightscorp losses have become greater each quarter, and the company has lost more than \$6 million since its inception.

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**Joe Mullin** / Joe Mullin has covered the intersection of law and technology — including the world's biggest copyright and patent battles — for a number of years, mostly at The American Lawyer.  
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